

HON'BLE Dr. JUSTICE B. SIVA SANKARA RAO

CRIMINAL PETITION No.10167 of 2015

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ORDER :

This criminal petition is filed by the petitioner/accused under Section 482 Cr.P.C. to quash the order dated 30.07.2015 in Cr.R.C.No.6 of 2014 on the file of the II Additional District and Sessions Judge, Guntur, wherein the order of the II Additional Judicial First Class Magistrate, Sattenapalli, dated 20.12.2013 in CrI.M.P.No.4142 of 2013 in Crime No.194 of 2013 of Amaravathi Police Station, was confirmed.

2. Heard learned counsel for the petitioner/accused and also the respondent-State represented by its Public Prosecutor.

3. The petitioner is accused in Crime No.194 of 2013 registered for the offence punishable under Section 9-B of the Explosives Act, 1884. The police having registered the crime on 28.10.2013 seized the fire crackers stock worth Rs.4,66,675/- from the petitioner and conducted panchanama in the presence of mediators. The crime is pending thereafter. Leave about the progress of the crime how far achieved, the petitioner for return of the said crackers went unsuccessful before the II Additional Judicial First Class Magistrate, Sattenapalli vide CrI.M.P.No.4142 of 2013 and equally in CrI.R.C.No.6 of 2014 before the II Additional District and Sessions Judge,

Guntur. By impugning the dismissal orders, the petitioner approached this Court for return of crackers.

4. It is the contention of the learned counsel for the petitioner basing on the expression of the Apex Court in **Sunderbhai Ambalal Desai v. State of Gujarat**^[1] that if the property is subject to speedy and natural decay, or if it is otherwise liable to be damaged or spoiled, will be permitted to make use. In fact, the decision has no application practically herein as these are the explosive substances and the alleged offence was for non-possessing licence under the Explosives Act or the Explosive Substances Act, as the case may be, with reference to register there under. It is further submitted by the learned counsel for the petitioner that by then even there were licences and permissions issued by the Gram Panchayat and local fire authorities, but for no licence under the provisions of the Explosives Act/Explosive Substance Act and subsequently the petitioner obtained the same.

5. Once such is the case, the property admittedly seized from the petitioner and the fire crackers not defused so far undisputedly and by keeping the same with police its use and utility being spoiled and there is ensuing Deepavali festival also, for which the crackers are being used, therefore, this Court feels it is just to return the stock to the petitioner on condition of execution of bond for Rs.5,00,000/-.

6. Accordingly and in the result, this criminal petition is allowed with a direction to return the fire crackers to the petitioner subject to the condition of his executing a bond for a sum of Rs.5,00,000/- (Rupees five lakhs only). It is made clear that, if the same is liable for confiscation, the Court can confiscate the value of the crackers.

7. Miscellaneous petitions pending, if any, shall stand closed.

Dr. B. SIVA SANKARA RAO, J

27th October 2015.

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